IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 510 OF 2004

Avinash Vishnu Pawar ... Appellant

V/s

Prabhakar Vishnu Pawar & anr. ... Respondents

Mr. P.S. Dani for the appellant.

Miss Gauri Godse for the Resp. Nos. 1 & 2.

CORAM: P.V. KAKADE, J.

DATED: 28TH JUNE, 2005

P.C.:

1. This is an appeal preferred by the appellant against the judgment and order passed by the Addl. District Judge, Kolhapur, dated 28.11.2003 dismissing his appeal and confirming the judgment and order passed by the Civil Judge, Jr. Divn., Kolhapur dated 21.2.2001 dismissing his suit.

2. I have heard the learned counsel for both parties. Perused the record.

The plaintiff filed the suit for declaration to the effect that the agreement dated 5.8.1994 as well as the

memorandum of partition dated 5.8.1994 in respect of the subject matter of the suit was illegal and not binding on the plaintiff and for possession of the suit property with prayer of perpetual injunction and mesne profits.

3. The plaintiff came with the case for declaration to the effect that agreement dated 5.8.1994 and the memorandum of partition dated 5.8.1994 between the plaintiff and the defendants were not enforceable in law and not binding upon him. Further it was for the relief of possession and mesne profit since the month of May, 2000 at the rate of Rs.500/- p.m. till plaintiff gets possession of the suit property from defendant No.1, and also for the relief of perpetual injunction.

The defendants challenged the suit and disputed the allegations made by the plaintiff.

4. The learned Trial Judge adjudicated the dispute on merits and came to the conclusion that the plaintiff failed to prove the oral partition between him and the defendants effected in the year 1993-94 suit property 1-B held to be his share. It was further held that it is not proved that an agreement dated 5.8.1994, suit property 1-B was to be transferred to the defendant No.1

in consideration of Rs.14,000/-. The plaintiff further failed to establish that agreement dated 5.8.1994 was void ab-initio for non-identification of the property and as such the suit came to be dismissed.

Appeal was carried to the District Court, Kolhapur. The Addl. District Judge, Kolhapur, after hearing both parties confirmed the findings of the lower Court holding that the appellant has failed to prove his ownership of suit terrace and the room which is constructed on the terrace and was of the view that there was no interference called for in the findings recorded by the learned Trial Judge.

5. At the outset, it may be noted that no substantial question of law is involved in this appeal and all the issues involved are purely questions of fact which are seen to be properly appreciated by both the Courts below on the basis of available evidence. Therefore, without further elaboration, I hold that, for want of substantial question of law, appeal must fail. Time and again, the Apex Court has held that the concurrent findings of facts recorded by both the Courts below, howsoever erroneous, cannot be disturbed by the High Court in exercise of power under Sec. 100 of the C.P.C.

This is more so apparent in this present case especially when it is seen that both the Courts below have properly

appreciated the evidence on record and reached to the findings which are legal, proper and correct.

In the result, the appeal fails and stands dismissed.

(P.V. Kakade, J.)